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Honorable Fred Van Sickle

6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT COURT OF WASHINGTON

8 DOUGLAS L. STANLEY,

9 Plaintiff,

10 NO. 09-CV-5003-FVS

11 v.

12 US AIRWAYS, INC.,

13 Defendant.

14

15 This matter came before the Court on the stipulation of the

16 parties for the entry of an order governing the disclosure and handling

17 of documents that any party considers trade secrets, confidential, or

18 proprietary business information.

19

20 In order to preserve and maintain the confidentiality of certain

21 information to be disclosed in this action, it is hereby stipulated that:

22

23 AGREED PROTECTIVE ORDER - 1  
(Cause No. 09-CV-5003-FVS)

24

25

LAW OFFICES OF  
**MILLS MEYERS SWARTLING**  
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2       1. The parties have a mutual interest in prompt and orderly  
3 discovery, and have discussed their concerns about the propriety of  
4 designating trade secret or confidential business information. Having  
5 weighed the issues related to having the Court decide the propriety of a  
6 confidential designation, the following compromise has been reached  
7 and is set forth below.  
8

9       2. Documents to be produced by any party in this litigation that  
10 contain confidential trade secret or proprietary business information  
11 shall hereafter be referred to as "Protected Documents." When used in  
12 this order, the word "documents" means all written material, videotapes,  
13 and all other tangible items, whether produced as hard copy, computer  
14 diskette, CD-ROM, or otherwise. The designating party will visibly  
15 mark all Protected Documents "Subject to Protective Order" or  
16 "Confidential." Material designated as Protected Documents shall be  
17 given confidential treatment as described below.  
18

19       3. The producing/designating party has the burden of proving  
20 that a Protected Document contains trade secrets or other confidential  
21 business or technical information should any party seek to disclose the  
22

document or its contents outside the parameters of this order. Prior to designating any material as protected, the producing/designating party will make a good faith determination that the material is, in fact, a trade secret or other confidential or proprietary business or technical information, the dissemination of which could damage the producing/designating party's competitive position. If any party to this litigation disagrees with the "Subject to Protective Order" or "Confidential" designation of any document, the party shall notify the producing/designating party in writing, which then will timely apply to this Court to set a hearing for the purpose of establishing that said document contains trade secrets or is otherwise confidential or proprietary. Any document marked as "Subject to Protective Order" or "Confidential" shall continue to be treated as a Protected Document pending determination by the Court as to its confidential or proprietary status.

4. Both the Protected Documents and the information contained therein shall be treated as confidential. Except upon the prior written consent of the producing/designating party or upon order of this Court,

1  
2 the Protected Documents and the information contained therein may be  
3 shown, disseminated, or disclosed only to the following persons:

4 (a) Counsel of record for each party in this lawsuit, including  
5 other members of counsels' law firms and any other counsel of record  
6 associated to assist in the preparation or trial of this case;

7 (b) Employees of counsel of record who assist in the  
8 preparation or trial of this case;

9 (c) Experts and non-attorney consultants retained by the  
10 parties to this litigation for the preparation or trial of this case, provided  
11 that no disclosure shall be made to any expert or consultant who is  
12 employed by a competitor of the producing/designating party;

13 (d) Any party to this litigation;

14 (e) Any mediator(s) retained by the parties to assist with the  
15 potential settlement of this lawsuit; and

16 (f) The Court and its staff in accordance with paragraph 6  
17 below.

18 5. Before receiving access to any of the Protected Documents or  
19 the information contained therein, each person described in paragraph  
20

4(c) above shall be advised of the terms of this order, shall be given a copy of this order, and shall agree in writing, in the form attached hereto as "Exhibit A," to be bound by its terms and to submit to the jurisdiction of this Court. Counsel for the parties shall retain the signed "Exhibit A" forms and keep a list of all persons who have received Protected Documents for inspection by the Court and, on order of the Court, counsel for the producing/designating party.

6. Any party seeking to file documents marked "Subject to Protective Order" or "Confidential" shall first provide the party who produced the documents an opportunity to file a motion to seal the documents. If the producing party files a motion to seal within fourteen (14) days of the date of receipt of notice of intent to file such documents, the other party shall refrain from filing the documents until the Court rules on the motion to seal. If the party who produced the documents does not file a motion to seal within fourteen (14) days of the date of receipt of notice of intent to file such documents, that party shall be deemed to have waived any objection to filing such documents without first sealing them. The parties further agree to cooperate, as reasonably

AGREED PROTECTIVE ORDER - 5  
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necessary, to provide the Court the necessary information upon which a determination regarding whether compelling circumstances exist to seal any such document(s). Regardless of whether a motion to seal is brought or granted, any party filing documents marked "Subject to Protective Order" or "Confidential" shall excerpt and file only the particular pages cited and relied upon, and, with respect to each page filed, shall redact portions not relied upon.

7. To the extent the Protected Documents or information contained therein are used in the taking of depositions, such documents or information shall remain subject to the provisions of this Protective Order, along with any transcript pages of the deposition testimony dealing with the Protected Documents or information, or any transcript pages which a party designates as confidential (with written notification thereof to counsel for the remaining parties) within 20 days of receipt of the deposition transcript. Any court reporter or transcriber who reports or transcribes testimony in this action shall ensure that all Protected Documents or information designated under this order remain confidential and shall not be disclosed by them, except pursuant to the

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2 terms of this order, and that any notes or transcriptions of such  
3 testimony (and any accompanying exhibits) shall be retained by the  
4 reporter under the terms of this Protective Order or delivered to counsel  
5 of record.  
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7 8. This order shall not apply to the disclosure of Protected  
8 Documents or the information contained therein at the time of trial, or in  
9 any appeal thereof, through the receipt of Protected Documents into  
10 evidence or through the testimony of witnesses. The closure of trial  
11 proceedings and sealing of the record of a trial involve considerations  
12 not presently before the Court. These issues may be taken up as a  
13 separate matter upon the motion of any of the parties at the threshold of  
14 or during trial.  
15

16 9. Inadvertent or unintentional production of documents  
17 containing information that should have been marked "Subject to  
18 Protective Order" or "Confidential" shall not be deemed a waiver in  
19 whole or in part of the producing party's claim of protection or  
20 confidentiality.  
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22 10. No party, nor that party's counsel or experts or any other  
23

23 AGREED PROTECTIVE ORDER - 7  
24 (Cause No. 09-CV-5003-FVS)

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2 person retained by the party to assist in the preparation of this action,  
3 shall under any circumstances sell, share, advertise, or publicize the  
4 contents of Protected Documents.

5  
6 11. This order may not be waived, modified, abandoned, or  
7 terminated, in whole or in part, except by an instrument in writing  
8 signed by the parties and approved by the Court. If any provision of this  
9 order shall be held invalid for any reason whatsoever, the remaining  
10 provisions shall not be affected thereby.

11  
12 12. This order shall be binding upon the parties hereto, upon  
13 their attorneys, and upon the parties' and their attorneys' successors,  
14 executors, personal representatives, administrators, heirs, legal  
15 representatives, assigns, subsidiaries, divisions, employees, agents, and  
16 independent contractors.

17  
18 13. Within 90 days after the conclusion of this litigation  
19 (including any appeals), counsel for each receiving party shall provide to  
20 the producing/designating party written certification that all Protected  
21 Documents, transcripts, and copies thereof, including all electronic  
22 versions, have been destroyed. In the event information protected

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24 AGREED PROTECTIVE ORDER - 8  
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pursuant to this order is placed into any digitized or other computer readable format, counsel for the receiving party shall certify to the removal of such documents from any and all computers and electronic storage devices.

14. The Court retains jurisdiction over the parties and recipients of the Protected Documents for the enforcement of the provisions of this order following termination of this litigation.

DATED this 24<sup>th</sup> day of July, 2009.

s/ Fred Van Sickle  
FRED VAN SICKLE  
UNITED STATES DISTRICT JUDGE

**AGREED AND APPROVED BY:**

Dated: July 22, 2009 RETTIG OSBORNE FORGETTE  
Attorneys for Plaintiff

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**AGREED PROTECTIVE ORDER - 9**  
**(Cause No. 09-CV-5003-FVS)**

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5 Dated: July 22, 2009  
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MILLS MEYERS SWARTLING  
Attorneys for Defendant

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AGREED PROTECTIVE ORDER - 10  
(Cause No. 09-CV-5003-FVS)

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## **EXHIBIT A**

**AFFIDAVIT OF**

being duly sworn and personally appearing before the undersigned  
attesting officer, duly authorized by law to administer oaths, deposes  
and says that the within statements are true and correct:

1. I have read the agreed protective order attached hereto and I understand its terms.

2. I agree that my signature below submits me to the jurisdiction of the United States District Court for the Eastern District of Washington in which the action of *Stanley v. US Airways*, Case No. 09-CV-5003-FVS, is pending. I further agree to be bound by the provisions of the agreed protective order, including to all promises undertaken in the order, as if originally agreed by me.

## FURTHER AFFIANT SAYETH NOT

Dated: \_\_\_\_\_ By: \_\_\_\_\_

---

(Print Name)

Sworn and subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**AGREED PROTECTIVE ORDER - 11  
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